

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**ROBERT MILLER, #866293,**

**Plaintiff,**

**v.**

**UNIVERSITY OF TEXAS MEDICAL  
BRANCH, ET AL.,**

**Defendants.**

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**Case No. 6:19-CV-228-JDK-JDL**

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Robert Miller, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The civil action was referred to United States Magistrate Judge John D. Love. The Magistrate Judge issued a Report and Recommendation, concluding that the lawsuit should be dismissed based on the three-strikes provision of 28 U.S.C. § 1915(g), which prohibits incarcerated plaintiffs from proceeding *in forma pauperis* when they have previously filed at least three lawsuits or appeals that were dismissed as frivolous, as malicious, or for failure to state a claim, unless the plaintiff shows he is in imminent danger of serious physical injury. Docket No. 8 at 2–4.

Plaintiff did not file formal Objections to the Magistrate Judge’s Report and Recommendations. Plaintiff did, however, file a motion for leave to file an amended complaint. Docket No. 10. Plaintiff’s motion only restates the claims that the Magistrate Judge rejected in his Report and Recommendation. *See* Docket No. 10. Therefore, if the Court construes Plaintiff’s motion as a proper motion for leave to file an amended complaint, the Court would deny the motion because Plaintiff’s amendment would be futile. *See Dyer v. Bd. of Pardons & Paroles*, No. 7:13-

MC-978, 2019 WL 1308256, at \*1 (S.D. Tex. Mar. 8, 2019) (denying a motion for leave to amend a complaint filed after the Magistrate Judge's report and recommendation because of undue delay and futility). Further, even if the Court construes Plaintiff's motion as Objections, the Court would find that Plaintiff's Objections are without merit because they do not address the deficiencies recognized by the Magistrate Judge.

The Court, having made a *de novo* review of the objection raised by Plaintiff, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Objections by Plaintiff are without merit. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is therefore


**ORDERED** that the Report of the Magistrate Judge (Docket No. 8) is **ADOPTED** as the opinion of the Court. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$400.00 filing fee. It is further

**ORDERED** that, should the Plaintiff pay the full filing fee within 15 days of the entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

**ORDERED** that any and all motions that may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **24th** day of **July, 2019**.

  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE